

HOWARD ROME MARTIN & RIDLEY LLP
1900 O'FARRELL STREET, SUITE 280
SAN MATEO, CA 94403
TELEPHONE (650) 365-7715

TODD H. MASTER [SBN 185881]
tmaster@hrmrlaw.com
ROBERT J. GUNDERT [SBN 104486]
rgundert@hrmrlaw.com
HOWARD ROME MARTIN & RIDLEY LLP
1900 O'Farrell Street, Suite 280
San Mateo, CA 94403
Telephone: (650) 365-7715
Facsimile: (650) 364-5297

Attorneys for Defendants
CITY OF MENLO PARK and DAVE BERTINI

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO

MICHAEL ZELENY, an individual

Plaintiff,

vs.

EDMUND G. BROWN, JR., an individual, in
his official capacity, et al.

Defendants.

Case No. 17-cv-07357-RS (TSH)

**DECLARATION OF TODD H. MASTER IN
OPPOSITION TO PLAINTIFF MICHAEL
ZELENY'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: March 18, 2021

Time: 1:30 p.m.

Dept.: Courtroom 3

Judge: Hon. Richard Seeborg

Trial Date: None

I, TODD H. MASTER, declare:

1. I am an attorney at law licensed to practice before this Court, and a principal in the law firm Howard, Rome, Martin & Ridley LLP, counsel of record for defendants City of Menlo Park and Dave Bertini, herein. I am a competent adult, with personal knowledge of the matters

HOWARD ROME MARTIN & RIDLEY LLP

1900 O'FARRELL STREET, SUITE 200
SAN MATEO, CA 94404
TEL: (650) 365-7715

1 set forth in this declaration. If called as a witness, I could and would competently testify to such
2 matters.

3 2. Attached hereto as Exhibit "A" are true and correct copies of excerpts from the
4 March 5, 2020 deposition transcript of Matthew Milde. I attended and was present during the
5 deposition of this witness.

6 I declare under penalty of perjury under the laws of the State of California and the United
7 States of America that the foregoing is true and correct and that this declaration was executed on
8 this 4th day of February 2021, at Burlingame, California.

9
10 
11 Todd H. Master

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ZELENY, an individual,

Plaintiff,

vs.

Case No.:
CV 17-7357 JS

EDMUND G. BROWN, JR., an
individual, in his official
capacity; XAVIER BECERRA, an
individual, in his official
capacity; CITY OF MENLO PARK,
a municipal corporation; and
DAVE BERTINI, an individual,
in his official capacity,

Defendants.

VIDEOTAPED DEPOSITION OF MATTHEW L. MILDE
San Francisco, California
Thursday, March 5, 2020
Volume I

Reported by:

CHRIS TE SELLE

CSR No. 10836

Job No. 3985719

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1 from somebody else, then you are free to answer. 11:05:41

2 BY MR. MARKEVITCH:

3 Q. May I have the answer, please.

4 MR. MASTER: Let him -- he's listening.

5 THE WITNESS: Can you repeat the question. 11:05:52

6 MR. MARKEVITCH: Please.

7 (The pending question was read.)

8 THE WITNESS: No.

9 BY MR. MARKEVITCH:

10 Q. Were you involved in reviewing Mr. 11:06:21

11 Zeleny's special permit application?

12 MR. MASTER: I will just object. Vague and

13 ambiguous, but you can answer.

14 THE WITNESS: I reviewed Mr. Zeleny's special

15 event permit. 11:06:34

16 BY MR. MARKEVITCH:

17 Q. What was your role in reviewing Mr.

18 Zeleny's application?

19 A. I provided an initial review of the

20 application. 11:06:45

21 Q. What is an initial review?

22 A. Number of things. Looking at information

23 provided by the applicant to see if their event

24 required additional information to then be sent to

25 the permit committee team. 11:07:09

1 Q. Do you remember what was the outcome of 11:07:18
2 your review of Mr. Zeleny's application?

3 A. I recall forwarding it on to my boss to
4 receive input from the city's leadership team.

5 Q. Who was your boss at the time? 11:07:48

6 A. Cherise Brandell.

7 Q. Was the application complete at the time
8 when you forwarded it to Ms. Brandell?

9 A. I don't recall it being complete.

10 Q. What is the standard procedure, what was 11:08:12
11 the standard procedure at the time for handling
12 applications that were incomplete, based on your
13 initial review?

14 MR. MASTER: Objection. Vague and ambiguous,
15 overbroad, incomplete hypothetical, and calls for 11:08:26
16 speculation, but, if you understand it, go ahead.

17 THE WITNESS: Can you repeat the question.

18 (The requested portion was read.)

19 THE WITNESS: The applicant would be contacted
20 and provided details on why their application was 11:09:02
21 incomplete, and they would be asked to resubmit.

22 BY MR. MARKEVITCH:

23 Q. Did you contact Mr. Zeleny and ask him to
24 resubmit an application?

25 A. I don't recall if I did. 11:09:16

1 Q. Do you believe that you would have, based 11:09:20
2 on the standard procedure that you just testified
3 about?

4 MR. MASTER: I'm not going to ask him to guess.
5 You're not asking him to guess, are you, counsel? 11:09:28
6 Lacks foundation. Calls for speculation. If you
7 know, you can certainly answer, but, don't guess.

8 THE WITNESS: I'm sorry.

9 (The pending question was read.)

10 THE WITNESS: I can't say for sure. 11:10:08

11 BY MR. MARKEVITCH:

12 Q. Was it a requirement to contact the
13 applicant under the circumstances where there was
14 some incompleteness to an application?

15 A. I can't recall any requirement. 11:10:34

16 Q. Why was the special permitting, special
17 event permitting procedure put in place?

18 A. To my knowledge, it was put in place
19 because we had two special events that occurred that
20 didn't get the proper permit documentation, and, 11:11:03
21 based on those events, staff identified that a more
22 communicative approach internally was needed to
23 approve special events in the city.

24 Q. What were those two events?

25 A. I don't recall the names. The first was a 11:11:32

1 BY MR. MARKEVITCH: 01:31:13

2 Q. Okay. Going back to step C on Exhibit 91,
3 so, looking at the boxes, the first one lists
4 Sergeant Matt Ortega, and, in parentheses, it says,
5 police. 01:31:59

6 Does that mean that Sergeant Ortega is the
7 liaison for the police department for the committee?

8 A. That is correct.

9 Q. Did Sergeant Ortega review every single
10 permit that came through the city? 01:32:15

11 MR. MASTER: Objection. Lacks foundation.
12 Calls for speculation.

13 THE WITNESS: I can't say that he did, no.

14 BY MR. MARKEVITCH:

15 Q. What was your procedure for routing permit 01:32:29
16 applications after you were satisfied that they were
17 complete pursuant to step B in terms of deciding who
18 to send it to?

19 A. Can you repeat the question.

20 (The pending question was read.) 01:32:48

21 THE WITNESS: I believe, as I mentioned before,
22 that I would scan it and send it to the permit
23 committee. Not in every case did everyone from the
24 permit committee get a copy at every, for every
25 instance of a permit that we had application. 01:33:23

1 regardless of the completeness. 02:41:49

2 BY MR. MARKEVITCH:

3 Q. Having looked at this application by Mr.
4 Zeleny today, is this an application that you would
5 pass on to the staff internal review, if you were 02:42:05
6 reviewing it right now?

7 A. No.

8 Q. Why not?

9 A. As I mentioned before, there's items that
10 are incomplete, and a map that is incomplete. 02:42:22

11 Q. So, what would you do? Would you go back
12 to Mr. Zeleny and ask him to clarify the map?

13 A. Potentially.

14 Q. Is there any reason for why you would not
15 do something like that? 02:42:46

16 A. The complexity of the event.

17 Q. The complexity of the event, though, would
18 probably require more detail from the applicant, am
19 I correct?

20 A. I would say so. 02:43:09

21 Q. So, why would you not ask him to draw the
22 stage, or even tell you whether there is, indeed, a
23 stage?

24 A. I don't recall. At the time, I recall
25 that this needed city leadership input before I did 02:43:27

1 anything with the permit. 02:43:34

2 Q. Did somebody tell you that this
3 application required input from the city leadership,
4 or did you decide that yourself?

5 A. No, well, I felt I needed someone in a 02:43:46
6 higher capacity to weigh in on how the city should
7 respond.

8 Q. I'm sorry, were you done with the answer?

9 A. I'm done.

10 MR. MARKEVITCH: Okay. 02:44:13

11 (Exhibit 97 was marked for identification
12 by the court reporter and is attached hereto.)

13 BY MR. MARKEVITCH:

14 Q. For the record, this document starts with
15 MP000243, and it's a chain of e-mails. 02:44:39

16 Mr. Milde, could you please take a look at
17 this.

18 A. Yes.

19 Q. Do you recognize these e-mails?

20 A. I do. 02:44:49

21 Q. And it looks like on July 10, the same day
22 when Mr. Zeleny submitted the application, you
23 forwarded that application to Cherise Brandell and
24 Derek Schweigart, am I correct?

25 A. That's correct. 02:45:08

1 Q. Why did you do that? 02:45:08

2 A. I felt they should be aware of the

3 application, as my supervisors.

4 Q. Did anybody instruct you to forward the

5 application when you received it? 02:45:21

6 A. No.

7 Q. At any time.

8 A. No.

9 Q. Have you spoken with Chief Bertini

10 regarding Mr. Zeleny prior to receiving this 02:45:33

11 application?

12 A. No.

13 Q. When was the first time you learned of Mr.

14 Zeleny's existence?

15 A. The day he submitted his permit. 02:45:45

16 Q. Now, why exactly, precisely, did you feel

17 that this application required you to forward it to

18 your superiors, rather than reviewing and processing

19 yourself?

20 A. It was complex. 02:46:02

21 Q. Anything specific?

22 A. There was just a lot of layers to it.

23 Q. Was it because it was protesting, it was

24 proposing a protest against child rape?

25 A. I don't think so. I don't recall at the 02:46:27

1 time. 02:46:29

2 Q. You don't recall at that time you were
3 aware whether this protest was related to child
4 rape?

5 A. I don't recall. 02:46:36

6 Q. Do you recall if you identified at the
7 time that the event would involve unloaded guns?

8 A. As I sit here, I don't recall if it was
9 included in the e-mail that Mr. Zeleny wrote. I
10 recall reading the e-mail and being aware of what he 02:46:56
11 sent me at the time.

12 Q. If you like, we can go back to the
13 previous exhibit.

14 MR. MASTER: It's actually at the bottom of 97,
15 isn't it? 02:47:08

16 MR. MARKEVITCH: Yeah, it's also there.

17 MR. MASTER: Sure.

18 BY MR. MARKEVITCH:

19 Q. Do you see that there is a list of weapons
20 there? 02:47:24

21 A. I see.

22 Q. Do you remember noting that at the time
23 when you reviewed the application?

24 A. I can't say that that was part of my
25 review, in terms of looking at the application, 02:47:34

1 because there was that element in, described in the 02:47:37
2 e-mail that was sent to me. I felt that it was more
3 important for city leadership to be aware and weigh
4 in on it, in terms on if it qualified as a special
5 event. 02:47:55

6 Q. And when you say, qualified as a special
7 event, are you talking about meeting a specific
8 definition?

9 A. Well, whether or not the special event
10 that was submitted should be routed, or if there was 02:48:07
11 another way to work with the applicant. I don't
12 know. I was waiting on direction.

13 Q. Is there a specific process for dealing
14 with special event permit applications that involve
15 legal use of guns? 02:48:21

16 A. No, not to my knowledge.

17 Q. The notation of or the expectation of use
18 of or presence of weapons was one of the components
19 of the complexity that you have referred, correct?

20 A. Yeah. And I saw that PD was cc'd on that 02:48:41
21 initial e-mail. PD would typically weigh in on
22 items like this. If someone wished to have this as
23 part of their event, I would rely on their input and
24 expertise on determining if it's appropriate.

25 Q. The police department would be involved in 02:49:04

1 this process regardless. 02:49:06

2 A. Correct.

3 Q. Pursuant to step C of the flowchart,
4 correct?

5 A. Correct. 02:49:13

6 Q. Any other aspect of complexity that you
7 found in this application that prompted you to
8 forward it to your superiors?

9 A. The fact that it was an event that was
10 being requested for a public median on a major 02:49:29
11 thoroughfare, there's a lot of safety implications
12 with that. That was of concern. We don't typically
13 get applications for community events on a public
14 median. It just doesn't happen. I haven't seen it.

15 Q. Is it fair to say that this application 02:50:04
16 was, in your mind, different enough that you decided
17 to forgo the entirety of the process on this
18 flowchart?

19 A. It definitely stood out.

20 Q. But you did not follow the flowchart with 02:50:17
21 regard to Mr. Zeleny's application, correct?

22 A. Well, I followed the flowchart in regards
23 to that I provided the initial review of it. I did
24 look it over, and looked at it, but I felt that
25 before we moved forward with it that city leadership 02:50:31

1 also needed to review and weigh in and provide 02:50:35
2 direction to staff.

3 Q. Is there a procedure for processing an
4 application the way you decided to do it with Mr.
5 Zeleny's? 02:50:51

6 A. Not that I recall, but, then again, we
7 have never gotten anything quite like this
8 application in before, so, it was an outlier.

9 Q. Is there a reason why this application
10 could not be processed the way the flowchart 02:51:04
11 indicates an application should be processed?

12 A. Again, due to the complexity of what was
13 submitted to me, I felt that it was necessary that
14 city leadership provide direction to staff.

15 (Exhibit 98 was marked for identification 02:51:58
16 by the court reporter and is attached hereto.)

17 BY MR. MARKEVITCH:

18 Q. Do you recognize this chain of e-mails?

19 A. Yes.

20 Q. So, again, you forwarded this application 02:52:47
21 to Clay Curtin and Jim Cogan; is that correct?

22 A. That's correct.

23 Q. Why did you do that?

24 A. They were the heads of the communication
25 team, and, as part of our responsibilities with the 02:53:03

1 A. Not that I was aware. 04:19:16

2 Q. Do you know if there was a meeting with
3 the applicant pursuant to step D?

4 A. Not that I'm aware.

5 Q. Did you ever recommend that a meeting 04:19:35
6 should be held?

7 A. No.

8 Q. Did you have the authority to make such a
9 recommendation?

10 MR. MASTER: Object. Vague and ambiguous. 04:19:45

11 THE WITNESS: That would depend on the permit.

12 BY MR. MARKEVITCH:

13 Q. In this case.

14 A. I would rely on PD to provide.

15 Q. Did you feel like it does not really 04:19:57
16 matter what you thought, you were not in control?

17 A. Yeah, I don't think my opinion really
18 mattered.

19 Q. You were just being told what to do,
20 correct? 04:20:17

21 A. That's correct.

22 Q. By Chief Bertini?

23 A. No. By the city's leadership team, and
24 city attorney, via Chief Bertini.

25 Q. So, was there anything that Chief Bertini 04:20:40

1 A. I don't recall. 05:00:47

2 Q. Do you recall any discussion of any
3 proposed modifications to his proposal that would
4 potentially allow the city to approve his
5 application for a special event permit? 05:01:02

6 A. I don't recall.

7 Q. Do you know if it would be proper for Mr.
8 Zeleny to open carry weapons if he received a permit
9 from the city?

10 MR. MASTER: Objection. Vague and ambiguous. 05:01:30
11 Overbroad. Calls for a legal conclusion. And
12 speculation. Go ahead.

13 THE WITNESS: I don't know.

14 BY MR. MARKEVITCH:

15 Q. Do you know anything about open carry 05:01:38
16 laws?

17 MR. MASTER: Objection. Vague and ambiguous.

18 BY MR. MARKEVITCH:

19 Q. Anything?

20 MR. MASTER: Same objection. 05:01:46

21 THE WITNESS: No.

22 BY MR. MARKEVITCH:

23 Q. Do you know what I mean when I say, open
24 carry?

25 A. Yes. 05:01:55

1 Q. What is your understanding? 05:01:56

2 A. A person can carry a gun in plain view, is
3 my understanding.

4 Q. Anything else?

5 A. No. 05:02:29

6 Q. Do you have any understanding how the open
7 carry matter ties into Mr. Zeleny's permit
8 application?

9 A. No.

10 Q. Did you ever apply for a special event 05:03:01
11 permit yourself, with the City of Menlo Park?

12 A. I can't remember.

13 Q. Did you ever organize any events in the
14 City of Menlo Park?

15 A. Yes. That was my job. 05:03:40

16 Q. Did you ever organize any events in the
17 City of Menlo Park in your individual capacity?

18 MR. MASTER: As a noncity employee?

19 MR. MARKEVITCH: Correct.

20 MR. MASTER: Okay. 05:03:52

21 THE WITNESS: Not that I recall.

22 MR. MARKEVITCH: So, I don't have any further
23 questions at this point. For the record, I have to
24 say that it is my assessment that there were a
25 number of questions that were not answered, and, 05:04:23

1 1 I, the undersigned, a Certified Shorthand
2 2 Reporter of the State of California, do hereby
3 3 certify:

4 4 That the foregoing proceedings were taken
5 5 before me at the time and place herein set forth;
6 6 that any witnesses in the foregoing proceedings,
7 7 prior to testifying, were duly sworn; that a record
8 8 of the proceedings was made by me using machine
9 9 shorthand which was thereafter transcribed under my
10 10 direction; that the foregoing transcript is a true
11 11 record of the testimony given.

12 12 Further, that if the foregoing pertains to the
13 13 original transcript of a deposition in a Federal
14 14 Case, before completion of the proceedings, review
15 15 of the transcript [] was [] was not requested.

16 16 I further certify I am neither financially
17 17 interested in the action nor a relative or employee
18 18 of any attorney or party to this action.

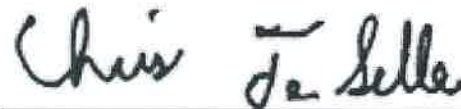
19 19 IN WITNESS WHEREOF, I have this date subscribed
20 20 my name.

21 21

22 22 Dated: March 19, 2020.

23 23

24 24



CHRIS TE SELLE

25 25

CSR No. 10836